

**Report on the WIPO Intergovernmental Committee on Intellectual Property and
Genetic Resources, Traditional Knowledge and Folklore,
16th Session, Geneva, 3 to 7 May 2010**

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Panel

An informational panel of indigenous and local communities regarding the concept of 'free and prior informed consent' preceded the formal session of the IGC. Indigenous representatives from different regions of the world presented similar concepts of what the individual conditions of the free and prior informed consent should be and stated that it should apply to any new aspects coming up after the first consent was given. The individual presentations were announced to become available on the WIPO website.

Opening statements

The IGC started with a full day of opening statements, in which many delegations expressed their preferences for different aspects regarding the intersessional working groups and – mainly developing countries – repeated their desire to adopt a binding international instrument on this matter. Although the statements also of industrialized countries this time sounded more cooperative than in the past, one might conclude from certain statements that some of their expressed options would be likely to require quite some more time. In particular, the wish to keep the intersessional working groups open to all participants of the IGC, thereby relying on the transparency requirement of the development agenda, is likely to be less productive than reducing participation in these working groups to a limited number of experts, as wished by most developing countries. Also, the fact that many industrialized countries such as the USA and European countries stressed the need for taking the time to draft definitions with great care, while certainly corresponding to a need for clarity, might be a sign for a desire to prolong as far as possible any discussion on the subject.

Discussions on folklore/TCEs

According to the mandate for the IGC adopted at the General Assembly in fall 2009, discussions at this session followed the so-called 'text-based approach'. Unlike in the preceding session, when the document of the 9th session was the main basis for discussions (WIPO/GRTKF/IC/9/4), the basis of discussions in this session was a revised text of the one just mentioned (WIPO/GRTKF/IC/16/4), which showed amendments proposed in more than 20 submissions, for which WIPO had called after the last session. The discussions this time focussed on Article 3 on acts of misappropriation and misuse (scope of protection) and on Article 4 on the management of rights. The discussions were of a substance-oriented rather than a political nature and included mostly technical remarks and proposals to further amend the text, or comments on the amendments included in this new version. The remarks included a proposal to replace the word 'remuneration' by 'benefit sharing', to delete the requirement of 'gainful intent' for the right to apply, or to include or exclude protection against the making of derivatives. Renewed criticism was expressed by indigenous peoples regarding the proposed need to register traditional cultural expressions for which prior informed consent would be required.

Intersessional Working Groups

While in December, quite some time was spent, though without success, during the formal discussions on the organisation of the Intersessional Working Groups that have to be organized within the current biennium, in May 2010, this issue was largely kept outside the general and substantive discussions and prepared in informal discussions during the breaks, so that most of the IGC-time was spent for discussions on substance. This time, the IGC even agreed on the necessary details regarding the Intersessional Working Groups, thereby following the decision of the General Assemblies last fall. Accordingly, it was clarified that the IGC alone is the negotiation- and decision-making body, while the IWGs are to support and facilitate the IGC's negotiations. The three IWG working sessions each are to cover one topic, namely, traditional cultural expressions, traditional knowledge, and genetic resources, and will last at least five days each. They will be open to all member states and accredited observers that shall be represented by one technical expert participating in a personal capacity, while representatives of member states and accredited observers may follow the discussions in the IWGs from a separate room.

The member states also agreed on how to fund representatives from developing countries and countries with economies in transition. The IWGs will work on the basis of all WIPO working documents, including the latest ones (WIPO/GRTKF/IC/16/4 for folklore/TCEs) as they will be revised on the basis of discussions at this (16th) IGC. They will elect own chairs and vice chairs of the IWGs, while those of the IGC will be invited to the IWG meetings.

It was also agreed that the amendments proposed in this 16th session of the IGC to the latest document on folklore (16/4) would be made available by the secretariat by June 19, and that the first IWG session on folklore/TCEs would take place from July 19 through 23.

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